Can-Tex Industries, Division of Harsco Corporation *and* UBC, Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 26-CA-8052

June 23, 1981

DECISION AND ORDER

On February 23, 1981, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The Board has considered the record and the attached Decision in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Can-Tex Industries, Division of Harsco Corporation, Magnolia, Arkansas, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

[1] The General Counsel and the Respondent have each excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] We correct the Administrative Law Judge's inadvertent failure to specify that interest on the backpay awarded is to be computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977). In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on March 26 and 27, 1980, in El Dorado, Arkansas.

The original charge was filed on September 20, 1979. The amended charge was filed on October 22, 1979. The original complaint in this matter was issued on November 2, 1979. The complaint was amended on January 10, 1980. The issues concern whether Respondent, in violation of Section 8(a)(1) of the Act, engaged in acts of interrogation, threats, solicitation, and promises, and discharged certain named employees because such employees engaged in protected concerted activity.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of the witnesses, I hereby make the following:[1]

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER[2]

Can-Tex Industries, Division of Harsco Corporation, Respondent, is now, and has been at all times material herein, an Arkansas corporation with an office and place of business in Magnolia, Arkansas, where it is engaged in the manufacture of plastic pipes. During a 12-month representative period, Respondent sold and shipped from its Magnolia, Arkansas, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Arkansas. During a 12-month representative period, Respondent in the course and conduct of its business operations purchased and received at its Magnolia, Arkansas, facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Arkansas.

As conceded by Respondent and based on the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED[3]

UBC, Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Issues—Supervisory Status*[4]

At all times material herein, the following named persons occupied the positions set opposite their respective names and have been, and are now, agents of Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act.

Fred Bradley	Plant Manager
Scott Dickson	Plant Engineer
Teddy Lee	Supervisor, Blending and Quality Control

[1] Certain of the General Counsel's and Respondent's post-trial motions have been disposed of by order identified as ALJ Exh. 6 and received into the record.

[2] The facts herein are based on the pleadings and admissions therein.

[3] The facts are based on the pleadings and admissions therein.

[4] The facts herein are based on the pleadings and admissions therein.

B. *Background*

Can-Tex Industries, Respondent, at all times material herein, was engaged in the manufacturing of plastic pipes at its Magnolia facility. The plant is divided into four departments: Production, grinding, shipping and receiving, and maintenance. In the production of plastic pipes, Respondent uses eight extruding machines which pump a polyvinyl chloride compound (PVC) through a die system where it is formed into a basic shape of a tube or pipe and ultimately cut into desired lengths. Other related functions, such as mixing the PVC compound itself, grinding pipe, and treating finished pipe to facilitate joining lengths together, are performed in the production department.

The plant operates on a four-shift schedule. Thus, eight extruding machines run 24 hours a day, 7 days a week, 365 days a year. When the need exists, the machines can be shut down in 15 minutes. When machinery is shut down, the PVC compound is held back and a purging compound is run through the machines which serves to push the resin out of the extruder barrels. This cleans the machines and thereby eliminates possibility of damage by buildup or burning.

Starting the machines back up is more difficult. The operator must set correct temperatures on the extruder dial and die system, twisting and pulling the pipe as it begins to leave the extruder, inserting the pipe in the puller, and then inflating the pipe with air pressure. Finally, the operator must make sure that correct speed is maintained on the puller and that the belling apparatus is functioning correctly. On the average, it would take about an hour and 10 minutes to start the machines after they have been purged. Depending on whether the machine is a single-head machine or a double head-machine, it requires from two to four employees to get the machine started again.

Once the machines are set up and operating, such machines may continue to operate without significant critical adjustments. Some machines have operated on such a basis for a week or two. However, two operators do monitor such machines and make necessary adjustments as may become necessary. It is clear that monitoring is necessary to see that correct temperatures are maintained on the machines and that all aspects of the equipment are functioning properly. Further, an employee must periodically remove the extruded pipe from the pipe racks.

Prior to Respondent's purchase from Robintech on July 1, 1979, the plant had been in operation for several years. Prior to Robintech's purchase in 1978, the plant was owned and operated by Amoco. While operating under the management of Robintech and Amoco, employees constantly contemplated shutting down the plant. In such a climate, Amoco in March 1977 granted another week of vacation and another holiday. These benefits and another holiday were taken away 2 months later when Robintech purchased the plant from Amoco. Throughout Robintech's ownership the employees discussed having a plant shutdown.

Scott Dickson commenced working for Amoco as temporary help in March 1977. Around the last of 1977, Dickson became a full-time permanent employee of Robintech. In the first part of 1979, Dickson was classified as a maintenance supervisor. Later, before July 1, 1979, Dickson became classified as plant engineer in charge of production and maintenance. When Respondent Can-Tex took over operations, Dickson continued as plant engineer in charge of production and maintenance.

Apparently one reason for employee dissatisfaction and desire for a shutdown of the plant was employee dissatisfaction with management. The local top management at Robintech before July 1, 1979, and at Can-Tex after July 1, 1979, consisted of Plant Manager Fred Bradley and Plant Engineer Dickson.

Dickson and Billy Jester had a good relationship while Dickson was only maintenance supervisor. After Dickson became plant engineer in charge of production and maintenance, Jester expressed dissatisfaction with Dickson and his abilities. The main basis for Jester's dissatisfaction appears to have been Jester's belief that Dickson's job as plant engineer over production and maintenance should have gone to a production supervisor. If such had been done, lead operators, like Jester, would have been in line for promotion to the job of production supervisor. Regardless of the merits of these beliefs or claims, Jester expressed dissatisfaction as to Dickson's ability and his having the job as plant engineer in charge of production and maintenance. Such dissatisfaction was apparently expressed to supervisors and to employees. Some of the supervisors reported to Dickson that Jester was dissatisfied with Dickson as plant engineer.

On or about July 1, 1979, Respondent Can-Tex took over operations from Robintech. On that date employees discussed having an immediate shutdown of Respondent's plant. Jester told his fellow employees that he did not want a shutdown of the plant, that he would do his best to get someone to come and talk to them. Jester spoke to his foreman, James Pace, and arranged for a meeting with Bob Oger, from personnel. Such meeting occurred on the morning of July 2, 1979.

Bob Oger and at least one operator off each shift were present at the July 2 meeting. The employees informed Oger that they could not get anything accomplished about the terms and conditions of their employment when they went through the plant manager, Fred Bradley, or the plant engineer, Scott Dickson. They further expressed their belief that they were being treated in the same manner by Respondent as they had been by Robintech. They specifically complained that employees were not in the proper pay classifications for the jobs they were doing. They also inquired into the possibility of a pay raise and acquiring new tools. Oger responded by stating that he would have to think about what was discussed, that he would have someone to come to the plant in or about 2 weeks to tell the employees what benefits they were entitled to, and that he would be at the plant at least once a month to discuss any employee problems. Despite this pledge, Oger never returned to meet with the employees on such matters prior to the shutdown on September 10, 1979.

Sometime within 5 days after Respondent commenced operations, Scott Dickson met with production and maintenance employees in order to distribute an outline of employee benefits and to obtain employee signatures

for tax and insurance purposes. Having only the information supplied on the outline, Dickson testified that he was not able to provide much information in regards to what these benefits really entailed. He instead informed employees that someone would be around in approximately 2 weeks to answer their questions.

Although the outline of benefits indicated that "specific questions should be directed to the attention of Scott Dickson," it appears that Dickson needed help in responding to the employees. Dickson credibly testified to the effect that employees were instructed to put their questions in writing. Exactly when such instructions were given or when questions were submitted is not clear. However, such instructions and questions clearly occurred before September 5, 1979. Sometime around the first of September 1979 Respondent posted a document of questions and answers, such questions apparently being the questions received from employees.[5]

Around the first of July 1979 and prior to July 9, 1979, there was an occasion when Billy Jester, Billy Ray Tatum, Supervisor James Pace, and Supervisor John Holly were in the parking lot of the plant and talking about the idea of a plant shutdown. What occurred is revealed by the following credited excerpts from Tatum's testimony.[6]

> Q. Do you recall around what time of day this conversation took place?
>
> A. About 12:30, 12:45 at night.
>
> Q. Do you recall what was said? The best you can remember, just say all that you can remember.
>
> A. Well see, James Pace and John Holly was telling us that the company wasn't being fair to us, that we should shut the plant down and they would back us up, that they thought things wasn't going right and they wasn't telling us what we should know and, you know, just in general things wasn't going to our—like it should be. The company—we didn't know any insurance, we didn't know what was going on and they thought if we shut the plant down or kind of showed some system of striking or something, the company would confer with us on some questions that we wanted answered.
>
> Q. Was anything else said during this conversation?
>
> A. Well Billy Jester said, you know, if we did strike and put up a picket line and everything, that they'd have to go through him to start the plant back up and he said they'd just have to go through him to start it up and they said they would back it up if we struck, that they would go along with us.
>
> Q. Did you say anything during this conversation?
>
> A. Yes ma'am, I told them I wouldn't do it, not unless the majority of the people would go along with it.
>
> Q. You wouldn't do what?
>
> A. I wouldn't shut the plant down.
>
> Q. Then what was said?
>
> A. Well Billy Joe said if you wouldn't shut it down, it'd be shut down and you wouldn't go along with it, that he'd have to whup me, fight me.
>
> Q. Okay. What did you say?
>
> A. I just laughed and said well if the majority goes along with it, you wouldn't have to worry about me.
>
> Q. Did you take it as a threat?
>
> A. No ma'am, not at all.

Sometime in July 1979 and prior to July 9, 1979, employee Faye McEachern told Plant Engineer Dickson that she had heard that an operator had threatened a fellow employee, that the threat was a severe one, that she did not know what the dispute concerned, but that the incident had occurred in the break room. McEachern told Dickson that Danny Phillips was the employee threatened. McEachern did not tell Dickson the name of the operator who had threatened Phillips.

Dickson spoke to Plant Manager Bradley about the alleged threat and was instructed to attempt to find out who had made such a threat. Instead of going to Phillips to ascertain who had made a threat to Phillips, Dickson commenced talking to other employees and inquiring if they had heard of any threats. Apparently Dickson received information of a nature to cause him to believe that an operator or operators had made a threat or threats to whip a person if there were a shutdown and the person tried to cross the picket line.[7]

C. *Events—Circa July 9, 1979*

1. Interrogation of Bethany—promises to Bethany[8]

Apparently after the foregoing, Plant Engineer Dickson and Plant Manager Bradley commenced interviewing various operators in Bradley's office. These interviews occurred prior to, but around, July 9, 1979. The first two operators to be interviewed were Mike Bethany and Jimmy Bryant. What occurred is revealed by the following credited excerpts from Bethany's testimony and findings of facts as indicated.[9]

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[5] The document of questions and answers was dated September 5, 1979. The evidence, however, is not of such probative clarity, considering the timing of critical events, to reveal that the document was posted prior to September 10, 1979. However, whether posted on or about September 5, 1979, or after September 10, 1979, the ultimate findings in this case would not be affected.

[6] Of all the witnesses to this event, I found Tatum to appear to be testifying in a more complete, truthful, and objective manner. I credit his testimonial version of the events over the testimony of any witness in conflict therewith.

[7] Considering all of the facts relating to talk about a shutdown, and the smallness of Respondent's plant, an inference is warranted that Dickson learned that there had been talk of someone being whipped if there were a shutdown and anyone tried to cross the picket line. Since Jester had made such remarks, it would appear that there would be talk of the same.

[8] Some of the allegations of conduct violative of the Act are substantially similar. The pleadings and litigation reveal that the allegations were as to specific events and not covering a number of events. Considering the date of a memorandum of warning concerning Jester and the alleged threat, I fix the timing of events as set forth.

[9] The cross-examination of Bethany elicited testimony to the effect that his testimony, concerning the questioning as to whether threats had been made, may not have been word for word. However, Dickson's testimony corroborates Bethany's testimony that there were questions by Dickson as to whether Bethany and Bryant had made threats. Considering this

Continued

Q. When you went into Mr. Bradley's office, the best that you can recall, what was said?

A. Scott was asking us if we was trying to organize the plant and I asked him what he was talking about and he said are y'all trying to go union and he went on to say if we didn't go union our benefits would be better than the union plants.

Q. Just go on, just say all of what you can remember being said.

A. He wanted to know what was the matter out in the plant with everybody, and we told him the pay scale was wrong for the helpers, that we had lost holidays and vacation and we didn't know nothing about insurance, that much about it, we just knew we had it, we didn't know what they done or nothing, paid for or anything.

Q. Was anything else discussed that you know of?

A. Well they asked us if we had heard about any threatening, which I hadn't heard nothing about it. That was the first that we knew about any threatening.

Q. He asked you what?

A. If we had done any threatening. He said the finger was pointing at us, that we had threatened somebody.

Q. Uh-huh.

A. That wouldn't walk out with us. And we told him we hadn't threatened nobody and hadn't heard nothing about it.

Q. He asked if you had threatened somebody if they didn't walk out with y'all?

A. Yes ma'am.

Q. Were those his words?

A. Yes ma'am.

Q. Did he use the words shut down the plant?

A. Oh, no ma'am—wait a minute. He asked us if we had threatened anybody.

Q. Who asked you this?

A. Scott Dickson.

Q. He asked you if you had threatened anybody, and what else did he say?

A. He said when he found out who it was, he would personally fire them.

Q. When he asked you if you had threatened anyone, what did you say?

A. I told him no, I hadn't threatened no one, didn't intend to threaten anybody.

In the conversation, Bryant either stated in response to a question or on his own about the reason for hostility by Jester and others to Dickson. What occurred in such regard is revealed by the following credited excerpts from Dickson's testimony.

From that point on, the conversation on the part of Mr. Bryant was really related to he and I in terms of the fact that we grew up together and we were doing a little reminiscing and this and that and the other and he also made a couple of comments about why he thought Billy Jester and some of the other employees were so hostile toward my being in the production supervisor—

Q. Do you recall exactly what he said, why he said they were hostile?

A. He told me his feelings were that it was strictly because I had come out of the maintenance department into a production oriented job. Mike Bethany's response after the initial no I wasn't involved in the threat, was basically the same because Mike and I also grew up together in the same small town in south Arkansas, and he relayed basically the same thing to me that Jimmy Bryant had relayed to me. After that discussion they left.

Contentions and Conclusions

The General Counsel alleges and contends, and Respondent denies, that (1) on or about mid-July 1979 Respondent acting through Scott Dickson, at Respondent's facility: (a) interrogated its employees about their union membership, activities, and sympathies and the union membership, activities, and sympathies of their fellow employees, (b) promised its employees better benefits if the plant did not go union, and (c) promised its employees increased benefits and improved terms and conditions of employment by soliciting employee complaints and grievances.

Considering the facts relating to Dickson's remarks to Bethany and Bryant, I am persuaded that the facts reveal that Respondent engaged in conduct of interrogation of an employee about his and other employees' union activities or desires, that a legitimate basis or need did not exist for such interrogation, that assurances of nonreprisal were not made, and that under such circumstances such interrogation was coercive and violative of Section 8(a)(1) of the Act.

Considering Dickson's remarks to the effect that if the employees did not go union that their benefits would be better than the union plants in the context of the referred-to interrogation concerning union activities and the solicitation of grievances and implied promises of increased benefits, the facts reveal a promise to the employees of better benefits if they did not select a union. Such conduct by Respondent is violative of Section 8(a)(1) of the Act. It is so concluded and found.

Considering Dickson's inquiry as to grievances in the context of the referred-to interrogation and statement of comparative benefits, the facts reveal an implied promise of increased benefits and improved terms and conditions of employment given to dissuade employee support of or interest in a union. Such conduct by Respondent is violative of Section 8(a)(1) of the Act. It is so concluded and found.

2. Alleged threats to Kennedy

Either on the same day or apparently shortly thereafter, operator James Kennedy was called to Plant Manager Bradley's office. There a conversation ensued be-

and the total context of the facts, I find Bethany's testimony reliable as to what was said concerning threats. As to Bethany's testimony otherwise, such testimony appeared more complete and reliable than did Dickson's. I credit Bethany's testimony over Dickson's where in conflict.

tween Plant Engineer Dickson and Kennedy. On such occasion Dickson questioned Kennedy as to whether he had made any threats to employees. Kennedy denied having made any threats to employees.[10] What occurred then is revealed by the following excerpts of credited testimony by Kennedy and findings of facts otherwise.[11]

> Q. The best that you can recall, could you tell us what was said?
>
> A. I went to the office, Scott's office first, and I asked him what he wanted. He said Fred and him wanted to talk to me in Fred's office. We went in there and they wanted to know what the problem was out on the floor.
>
> Q. Who said what?
>
> A. Scott wanted to know what the problem was. I told him that the people were dissatisfied.
>
> Q. What else was said?
>
> A. And he wanted to know what the dissatisfaction was. I told him they were dissatisfied with the insurance, they didn't know what the insurance was or the benefits and all since a new company had taken over. They were also dissatisfied with their pay scale. They didn't feel it should take eighteen months to reach from hire in pay to top helper's pay. They were also dissatisfied with people working as operators and getting helper's pay.
>
> Q. Was anything else said?
>
> A. Yes. Scott said he knew that I had tried to help organize a union in 1971 with OCAW . . . . I told him the situation the way it was going now the union was very possible coming in. He said Can-Tex people didn't care because the other five plants were union.

Apparently before July 1979, Kennedy had requested a transfer from the shift that Jester was on to another shift and had been transferred. Later, however, Kennedy had been transferred back to the shift that Jester was on. The overall facts reveal that Dickson steered the conversation into an inquiry of why Kennedy had transferred back to his old shift. Dickson had heard that Kennedy had transferred back because he had not received an increase in pay and promotion. Dickson told Kennedy why he had not received a promotion. What occurred as regards such discussion is essentially revealed by the following credited excerpts from Dickson's testimony.

> The next operator was James Kennedy. Here again, he came in when his shift came on. I asked him initially if he had been involved in threatening a fellow employee, his response was no. After that had been determined the bulk of his conversation revolved around the fact that he had asked to be removed from the shift that Billy Jesters was on, to be moved onto John Holly's shift for two primary reasons. One was, according to him, to get away from Billy and the other one was that there was good prospect that he might be able to make a lead operator on Mr. Holly's shift. When he transferred shifts he did it with the understanding that he would have to take the same tests that all of the other lead operators had had to take. Unfortunately he never availed himself of the test and as a result of that he never got promoted into that other job. Evidently as a result of not getting promoted into the other job he got discouraged and wanted to go back to his original shift, which this happened while I was on vacation. When I got back from vacation he was back on his original shift. I didn't ask him prior to the meeting that we had with him that we're discussing right now, I didn't ask him why he had gone back. I had heard the reason why he wanted back was because he had not gotten the increase in pay and promotion. This turned out to be a good opportunity for him to express his opinions on what had happened and, of course, I explained to him why he never got the promotion and the fact that I had offered to give him the test on two different occasions and he didn't take it. That was the bulk of the conversation.

Contentions and Conclusions

The General Counsel alleges and Respondent denies that Scott Dickson, "on or about early July, 1979, threatened its employees with more onerous working conditions by informing them that they would have to stay at their machines all day and would not be allowed to go to town and bring their lunch back if the employees selected their union as their bargaining representative."

Considering the credited aspects of the testimony of Kennedy, the facts do not reveal that Respondent engaged in the above-referred to alleged conduct violative of the Act. It will be recommended that the allegations of conduct violative of the Act be dismissed.

I would note that Kennedy's testimony, as to Dickson's inquiry as to grievances, and to Dickson's reference to Kennedy's having been in a union, supports similar findings of conduct violative of the Act as previously made concerning the events in which Bethany was involved. The pleadings, however, related to conduct directed to an "employee" and the pleadings concerning the events testified to by Kennedy only referred to alleged "threats." In any event, further findings are unnecessary and would not affect the remedy.

3. Solicitation, promises of benefits, and the interview of Jester

Sometime after Dickson had spoken to Kennedy as set forth previously, Respondent requested that Jester report to Plant Manager Bradley's office. Jester reported to

[10] I credit Dickson's testimony over Kennedy's as to whether he questioned Kennedy about having made any threats. This resolution of credibility is essentially based on a consideration of the logical consistency of all of the facts.

[11] As to the facts as credited, I found Kennedy's version of events more complete and reliable. As to Kennedy's testimony concerning remarks by Dickson as to loss of privileges or restrictions if the plant went union, I do not credit such testimony. Kennedy's testimony on cross-examination reveals that he was unsure that Dickson made such remarks. Dickson denied making statements to employees that employees would have to stay at their machines and that employees could not go to town and bring back their lunch. Dickson testified that he had made such statements to Supervisor Pace. Kennedy's testimony revealed an unsureness. Perhaps Kennedy heard that Dickson had made such remarks and was confused as to what had been said.

Bradley's office. At this time Plant Manager Bradley and Plant Engineer Dickson spoke to Jester. Dickson in effect asked Jester whether he had made threats against a fellow employee. Jester responded by asking Dickson in effect what threat had been made. Dickson told Jester that he understood that the threat had been to punch someone in the face. Jester apparently thought that the alleged threat was with reference to what he had said to Billy Ray Tatum to the effect that if there were a shutdown and someone tried to cross the picket line that he would whip them. Jester indicated to Dickson that he had made a threat to a fellow employee.[12] Dickson and Bradley then questioned Jester concerning problems as is revealed by the following credited excerpts from Jester's testimony.

> They asked me if I knew what the problems was out there and I told them the best I could.
>
> Q. What did you tell them?
>
> A. I told them that it was on account of the boys not being able to get a raise for the helpers before 18 months and we couldn't keep good hands out there to work, there's too much turnover and it was costing too much money and everything and it was in the benefit of the Company that I was talking to them.
>
> Q. Was anything else said?
>
> A. They asked me if I could go out there and talk to the employees and get them to work things out and everything and I told them there wasn't nothing that I could do, it had gone too far.

Dickson testified in a conclusionary manner that Jester told him in effect that he, Dickson, was inept, and that Jester would not work with him. I discredit Dickson's testimony that Jester told him that he would not work with him. However, I do credit Dickson's testimony that Jester told him that he was not qualified for the production manager's job. The facts relating to such remarks by Jester are as revealed by the following credited excerpts from Dickson's testimony.

> Q. In the job of production manager?
>
> A. Production manager, right. That I was not qualified for it because I had never been an extruder operator, I had been doing a fine job as far as the maintenance aspect of it was concerned, but I had no business in the production part of it. I tried to explain to him that I didn't put myself in that job, that someone else decided that and I would have been very foolish to have turned it down, I think. At times I questioned that, but—most of it revolved around me and his feelings toward me and I repeatedly asked him to work with me, to give me an opportunity, if he was having problems I wanted to try to help him, so on and so forth and toward the end of the meeting he did finally say that he would give it a try. That's as much as I could ever get out of him as far as cooperation. To my knowledge he never did, after the meeting he didn't give it a try. I did write Mr. Jesters up with a verbal warning written up and put it in his personnel file strictly as a reference. Here again, the warning was not because of his feelings toward me, it was because of this constant input or what it seemed to me constant input of fellow employees about his behavior and attitude.

Although Dickson did not give Jester a written reprimand, Dickson completed a form described as an "Employee Warning Record," indicating that a verbal warning was given Jester on July 9, 1979, that the date of conduct complained of was during the week of "1-7-79."[13]

Contentions and Conclusions

The General Counsel alleges and Respondent denies that (1) on or about mid-July 1979 Respondent, acting through Fred Bradley at Respondent's facilities, interrogated its employees regarding its employees' union membership, activities, and sympathies and regarding their fellow employees, and (2) on or about mid-July 1979 Respondent, acting through Fred Bradley and Scott Dickson at Respondent's facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment.

Considering the foregoing facts concerning the interview of and conversation among Bradley, Dickson, and Jester, and in the context of the conversations on or about the same date among Dickson, Bethany, Bryant, and Kennedy, the facts reveal as alleged that Respondent, by its solicitation of grievances and in the manner and context as done, engaged in implied promises of increased benefits and improved terms and conditions of employment if the employees did not engage in union activity. Such conduct is clearly violative of Section 8(a)(1) of the Act. It is so concluded and found.

The credited facts do not reveal, as alleged in effect, that Respondent, by Bradley, interrogated Jester about his or others' union activities. The allegation of unlawful conduct in such regard will be recommended to be dismissed.

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[12] Dickson testified to the effect that he gave more details as to where the "threat" occurred. I discredit his testimony to such effect. Considering the total testimony of Jester, Dickson, and all of the facts, I am persuaded that the testimony of each witness should be credited to the effect as set forth by the facts found.

[13] Jester also testified to the effect that Bradley asked him if there were any union talk out there. At the time of this testimony, the General Counsel's complaint did not include an allegation that Respondent, by Bradley, had engaged in interrogation of employees about the Union. At the hearing, after such testimony, the General Counsel amended the complaint to include such allegation. Bradley was not presented as a witness. Respondent, however, cross-examined Jester concerning a pretrial affidavit which set forth that Jester had denied to Dickson and Bradley that he had threatened an employee. Further, cross-examination revealed that Jester had set forth in a pretrial statement that the Union was not mentioned in the conversation he had with Dickson and Bradley. The pretrial affidavit of Jester contained such a statement. Jester's testimony concerning why his affidavit contained a denial of threats and how he now recalled that he had been questioned about union talk was not persuasive. I discredit his testimony to the effect that he was questioned about union talk. The reference to week of "1-7-79" appears to be in military reference to first week of July 1979.

D. *The No-Solicitation Rule*

The facts reveal that Respondent in July of 1979 had a policies and procedures manual in which a rule set forth that "[t]he Company doesn't allow soliciting of any kind on company premises." The credited evidence reveals that copies of Respondent's policies and procedures manual were placed for employees' benefit at a location on plant premises or distributed otherwise. There is no evidence that any solicitation occurred at times material to this proceeding. Nor is there evidence that this rule was actually enforced.

There is evidence that Respondent's predecessor had many of the same policies and procedures that Respondent has had during the relevant time of the events involved in this proceeding. On October 10, 1979, Respondent reworded the rule against soliciting as is revealed by the following copy of a notice relating thereto.

NOTICE TO ALL EMPLOYEES

> Please note Plant Rule 14 on page 5 of your "Policies and Procedures" brochure that was recently distributed to you. We have received advice that this rule needs to be reworded as follows:
>
> > 14. CAN-TEX Industries does not allow solicitation of any kind during working hours in working areas.
>
> Effective today, we are changing this wording in "Policies and Procedures" brochures in stock. Please change this in your brochure as well.
>
> CAN-TEX INDUSTRIES
> Don Bailey, Vice President
> Industrial Relations

An examination of the evidence relating to the policies and procedures of Robintech and of Can-Tex indicates that the policies and procedures of the two companies are essentially similar. There is, however, enough difference of substance as to some of the policies and procedures to reveal that Can-Tex did not simply, without consideration, adopt as its own the policies and procedures of Robintech.

Considering all of the foregoing, it must be found that Respondent had from sometime in July 1979 to October 10, 1979, an overly broad no-solicitation rule. It is clear that the distribution of policies and procedures, including such rule, to employees would have an inherently coercive effect. Accordingly, even without evidence of enforcement, such rule was coercive and Respondent, by having such rule, violated Section 8(a)(1) of the Act.[14]

E. *Concerted Complaint*[15]

The evidence is overwhelming and the facts clearly establish that from the time of commencement of operations by Respondent and to September 10, 1979, Respondent's employees concertedly complained to Respondent and discussed with each other about complaints related to wages, hours, and working conditions of such employees. Thus, in early July 1979, requests were made for meeting with Respondent's officials concerning explanations and discussions related to wages, hours, and working conditions. Plant Engineer Dickson was clearly aware of complaints about working conditions as a result of his conversations with Bethany, Bryant, and Kennedy. That Respondent's belief that such complaints were ongoing is revealed by Respondent's publication in early September, whether before or after September 10, 1979, of its answers to questions submitted earlier in writing by employees. Further, Plant Manager Bradley's conversation with employee Cooper, around September 1, 1979, about talk of a shutdown, as well as Dickson's, Holly's, and other foremen's discussion of an expected shutdown, all reveal Respondent's knowledge or belief that employee concerted activity continued from early July 1979 to September 10, 1979. Further, considering the size of Respondent's plant, it is clear that Respondent was aware of Jester's ongoing concerted activities.

F. *Events—Interrogations—Circa September 6, 1979*

Cooper credibly testified to the effect that he had a conversation with Plant Manager Bradley about a week before September 10, 1979. What occurred is revealed by the following credited excerpts from Cooper's testimony.[16]

> Q. Do you remember about how long before the plant was actually shut down?
>
> A. No.
>
> Q. Do you know if it was a week before, two weeks before, a month before?
>
> A. About a week I'll say.
>
> Q. About a week, okay. Do you recall what was said? The best that you can recall, what you remember.
>
> A. You mean what I said to Mr. Bradley?
>
> Q. Yeah, whatever was said.
>
> A. Well it was like, I went to pick up my check on pay day, whatever day it was, and he was in the office and we started talking and the situation was coming up at the plant. I told him that I wouldn't participate in it and he asked me, he said are they still talking about shutting the plant down and I told him I don't know but whatever happens I won't be in it.
>
> Q. You told him you wouldn't be in it?
>
> A. Yes.
>
> Q. Was anything else said about it that you can recall?

[14] *Daniel Construction Company, a Division of Daniel International Corporation*, 236 NLRB 193 (1978); *Pepsi-Cola Bottling Co. of Los Angeles*, 211 NLRB 870 (1974). The General Counsel does not attack the validity of Respondent's solicitation rule as modified. Respondent's notice of such modification, however, is clearly not sufficient to negate the coercive effect of the prior existence of an unlawful rule.

[15] The facts are based on a composite of the credited testimony of all witnesses.

[16] Bradley did not testify in this proceeding.

A. That was all he said, I left.

Contentions and Conclusions

The General Counsel contends and Respondent denies that Respondent, "on or about September 6, 1979, acting through Fred Bradley, at Respondent's facility, interrogated its employees regarding its employees' concerted protected activities." Considering all of the facts, I am persuaded that Bradley's interrogation was not based on legitimate need. Further, assurances of nonreprisal were not given to Cooper. Under such circumstances, the interrogation constituted coercive interference with the exercise of employee protected concerted rights.

Little attention was given by any of the parties to setting forth the precise meaning of "shut down." It is clear that if employees successfully strike and withhold their services that there may be a resultant shutdown because the employer might be unable to continue operations. Perhaps "shut down" could have reference to a physically turning off of equipment and a shutting down of operations. As indicated later, Respondent referred to the September 10, 1979, activity as an unauthorized shutdown. Be that as it may, as indicated later, the activities of the employees on September 10, 1979, in the "shut down" constituted protected concerted activity and was not "unprotected" because machinery was cut off and stopped from running. It is hard to believe that Bradley construed his remarks as limited to the "shut down" of machinery and needed to prepare for such eventuality. Had he done so, it would appear that Respondent would have advised employees that "if there is a 'shut down,' do not turn off the equipment," that Respondent would decide whether the equipment should be turned off and take steps to protect such equipment. Thus, the facts reveal that Bradley's interest was simply whether employees intended to concertedly strike. Considering all of the foregoing, I conclude and find that Respondent, by Bradley, coercively interrogated Cooper about his and others' concerted activities. Such conduct constitutes conduct violative of Section 8(a)(1) of the Act. It is so concluded and found.

G. *The Discharge of Jester on September 6, 1979*

The General Counsel alleged and Respondent admitted that Respondent discharged Billy Jester on September 6, 1979. There appeared to be a minor question during the hearing as to whether Respondent discharged Jester on September 5, 1979. The facts reveal that Jester's last date of work was September 5, 1979, and that he was notified of discharge on September 6, 1979, before commencing work on September 6, 1979. Respondent's records reveal a "Separation Notice" dated 9-6-79 which indicates that Jester was discharged and "left our employ today." It is clear and I so find that Jester was discharged on September 6, 1979, before engaging in work, as was or would have been scheduled otherwise on that date.

As has been indicated, the facts are clear that Jester engaged in concerted activities in early July 1979, and was continuing to engage in such concerted activities up to the time of his discharge on September 6, 1979. The facts also reveal Respondent's awareness of such concerted activities, that Respondent was concerned that such concerted activities might result in attempts at unionization of its employees. The facts also reveal that Respondent's concern over a "shut down" triggered the discharge of Jester on September 6, 1979.

As indicated, Respondent discharged Jester on September 6, 1979. What occurred is revealed by the following credited excerpts from Jester's testimony.

> Q. Now what happened on September the 6th?
>
> A. The day I was fired I got out to the plant early and sat in the break room. I was always early, but I had some business to attend to at the bank and the bank closes at 2:30 so when I got through I went on down to the plant instead of driving 15 miles back home, I was going to work at 4:00. I sat in the break room until time to go to work and I went up there to check pipe at 4:00 and as I started to check pipe Mr. Pace walked up to me and said I want to talk to you and I said okay, let her rip and he said I'm going to have to let you go. I said why, he pointed toward the front office and said they want me to. I said I'm not doing a good job for you and he said it ain't got nothing to do with your job, said they want me to let you go. I said you can't give me a reason and he showed me a piece of scrap paper with insubordinate wrote on it and I asked him if I could talk to somebody else. He said I could talk to Mr. Dickson so I went in and talked to Mr. Dickson about it and I asked him why and he showed me a piece of scrap paper with insubordinate and embarrassment to the plant management on it and I asked him how I had been insubordinate or embarrassed anybody and he would not explain to me except that he said I was stirring up trouble and he would not explain to me, how I had been insubordinate or embarrassed anybody. So I asked him could I talk to Mr. Bradley and he said I could. I went in and asked Mr. Bradley why I was being fired and he said didn't Scott tell you and I said well, he told me but he wouldn't explain it to me, I would like to hear it from you. He opened his desk drawer and started fumbling around in the desk drawer and I said well, if that's the way you feel about it and all you've got to say I'll go but I guess you know that y'all had no reason and I will take this to the Labor Board and I left.

It is noted that Jester testified credibly that Dickson showed him a scrap of paper with "insubordinate" and "embarrassment to plant management" on it. It is not clear whether the "scrap of paper" referred to by Jester was the "separation notice" completed by management and not given to Jester or some other piece of paper. In any event, the tenor of the "scrap of paper" and the "Separation Notice" appears to be the same. It is clear that the Respondent completed a "Separation Notice" for its files concerning the separation of Jester on September 6, 1979. [Omitted from publication.]

In addition to the foregoing facts, Dickson testified in effect that the decision to discharge Jester was triggered

by a report from Bradley concerning a complaint against Jester by an employee named Cooper. Dickson's testimony in such regard is revealed by the following excerpts from Dickson's testimony.

> Q. Okay. Did you have any other problems with Mr. Jester?
>
> A. The day that I fired Mr. Jesters, Mr. Bradley came to me and told me that James Cooper had been in to see him and that James was very concerned about his job security, the reason being here again that Mr. Jesters was encouraging him to do certain things that might jeopardize his job if he went along with them, and by the same token if he didn't go along with them Mr. Jesters was going to make his job very difficult for him. After I received that bit of information here again I took it seriously because I didn't think Mr. Bradley would have brought it to me unless he thought it was serious. I took that information along with the history behind Mr. Jesters to Gary Murph, who just happened to be in the plant because they were initiating a management training program in the Magnolia plant at that time. I took all of the information to Mr. Murph, explained the situation, went through the whole case with him and he advised me to discharge Mr. Jesters. Based on both misconduct and insubordination.
>
> Q. And what did you do then?
>
> A. I took his advice and Mr. Bradley's advice because I had also consulted him, he was the plant manager, and I called Billy Jester's shift supervisor into the office, who was James Pace, and instructed Mr. Pace that he was going to have to discharge Mr. Jesters on the grounds of misconduct and insubordination. I told him why he was being discharged and what terms to use, specifically misconduct and insubordination. I told him to tell Billy if he had any questions he could feel free to come to me and ask me, whatever they might be. You want me to go on?
>
> Q. Yeah, go on.
>
> A. James Pace then went out, found Mr. Jesters and relayed the information on to him. Mr. Jesters in turn came to me and wanted to know once again why he was being discharged, so on and so forth. I explained to him why he was being discharged, I explained to him that he was being discharged because I was receiving numerous complaints from his fellow workers about his attitude and the climate that he was generating within the plant and that he was making other employees within the plant feel very insecure in terms of any job security, that he in essence had them between a rock and a hard place. If they did what he wanted them to do, there was a possibility they would be fired by the company. If they didn't do what he wanted them to do well then he was putting pressure on them in that he was going to make their jobs more difficult for them. He once again expounded upon his belief about my abilities to do the job and so on and so forth, and after all that was over he wanted to go see Mr. Bradley. I went in and told Mr. Bradley what had happened, why I had decided to go ahead and fire Mr. Jesters and Mr. Jesters then went in to see Mr. Bradley. They talked together for ten or fifteen minutes. When Mr. Jesters came out of Mr. Bradley's office he came back through my office and he made a comment as he was going out the door, if you had only given me two more weeks I was going to take my vacation and quit anyway. And I made the comment well if that's the case, why don't you go ahead and quit and that way you won't have to worry about this being on your history for the rest of your life. Oh hell no, I've been fired and I'm going to stay that way, quote. He then went on out the door.

Dickson was questioned as to acts of insubordination and other reasons for Jester's discharge. Dickson's testimony appeared to reveal rambling reasons. Thus, Dickson alluded (1) to Kennedy's complaint about working with Jester as part of Kennedy's reason for a transfer and promotional opportunity, and (2) a complaint by an employee named Terry that Jester blamed him about work and threatened his possibility of promotion. As to insubordination, Dickson's testimony veered essentially to a complaint that Jester was unhappy and complained to others concerning Dickson's having been promoted to the job Dickson held.[17] Dickson indicated that Jester did not in fact disobey any orders. Further, as to misconduct, Dickson alluded to the incident of the "threat" in early July, the subject of the verbal reprimand, and to the report by Bradley concerning Cooper's complaint.

Contentions and Conclusions

The General Counsel contends and Respondent denies that Respondent discharged Billy Jester on September 6, 1979, because Jester engaged in protected concerted activities, and that such discharge was violative of Section 8(a)(1) of the Act.

Considering all of the facts, I find merit in the General Counsel's contentions. It is clear that Billy Jester engaged in protected concerted activities and that Respondent was aware of such activities. It is clear that Respondent was concerned that there would be a "shut down" and, as a result of Bradley's conversation with Cooper, believed that there might be a shutdown. It is clear also from Bradley's report to Dickson, concerning his conversation with Cooper, that Bradley considered Jester to be involved in an upcoming shutdown.

Thus, the awareness that a shutdown was still being talked about among its employees and a belief that Jester was involved in such talk triggered the decision to discharge Jester. I am persuaded from Dickson's testimony and the vagueness of much of such testimony that Dickson's testimony as regards insubordination and misconduct constituted rationalization designed to develop a pretextuous reason for the discharge of Jester.

[17] All of Dickson's testimony has been considered. It would burden this Decision more than necessary to repeat and clarify the exact meaning of all of Dickson's testimony.

I would note that Respondent argues in effect that the employees who physically turned off running equipment on September 10, 1979, engaged in an "unauthorized shut down," that such employees were not engaged in protected concerted activity, and that Respondent could lawfully discharge such employees for the taking over of a management decision. It would appear that such argument would also touch the question of whether Jester was engaged in protected concerted activities. As indicated later, the facts reveal that the employees who engaged in a "shut down" on September 10, 1979, and who at such time turned off Respondent's running equipment were engaged in protected concerted activity. None of the parties elicited in detail what the employees or supervisors intended by usage of the words "shut down." Assuming that Jester's talking of and involvement in a "shut down" related to the turning off of equipment at the time of commencement of a shutdown, such does not reveal his conduct to be unprotected. Further, even if the turning off of equipment in a shutdown constituted unprotected conduct, when an employee like Jester has engaged in concerted activity which is protected, mere talk, as in this case, would not remove him from the protection of the Act. Further, as to the alleged misconduct directed toward Cooper as related to Dickson by Bradley, Cooper's credited testimony reveals that Jester did not engage in such misconduct.

In sum, the facts reveal that Respondent discharged Jester on September 6, 1979, because he had engaged in protected concerted activities. Such conduct is violative of Section 8(a)(1) of the Act. It is so concluded and found.

H. *Events—September 6–10, 1979*

Respondent's employees, prior to September 6, 1979, had been talking about having a shutdown. The reason for such a shutdown was to present grievances and to cause Respondent to send a responsible official from Mineral Wells, Texas, to talk to employees about working conditions and benefits. After the discharge of Jester, employees believed that Respondent had discharged Jester because of belief that Jester was a ringleader of the employees in their plans for a shutdown. The employees considered the discharge of Jester also as one of their reasons for having a shutdown and for a meeting with Respondent's officials.

Norman Biddle, a first-shift operator, and various other operators and employees wrote up a petition containing the grievances they wished to present to management. Biddle and other employees decided that they would "shut down" the plant around the commencement of September 10, 1979. The evidence indicates that the employees on the various shifts had all agreed upon a shutdown. There is no evidence that any employee did not agree with the idea of a shutdown.

The employees had decided to have the shutdown around midnight so as to avoid the presence of Plant Manager Bradley and Plant Engineer Dickson.

Sometime during the several days before September 10, 1979, Supervisor Holly had talked with some of the employees about their plans for a shutdown and had expressed his opinion that they were going about the matter of presenting their grievances in the wrong way.[18]

The facts reveal that Supervisor Owen Fleming, on September 9, 1979, around 8 a.m., told Supervisor Holly that he understood that the employees planned on shutting the plant down on Holly's shift that night around midnight.

I. *Events—September 10–14, 1979*

Around 12 a.m. on September 10, 1979, employees who were not working joined with employees who were working and turned off the various machines which were running. Biddle credibly testified to the effect that the employees turned off the machines in order to prevent damage to the machines by the running of machines without attendants.[19] What occurred is revealed by the following credited excerpts from Holly's and Biddle's testimony.[20]

Excerpts From Holly's Testimony

Q. Could you tell me what happened that night?

A. Well I got to work about ten or fifteen minutes before relief time, before twelve. Jack Cassiday was the shift supervisor before me. I came in, I asked him how everything was running, he said everything was running fine. I talked to him about five minutes and I said Jack, you got everything figured you can go on and I'll take it now and he said okay. Jack left and I looked out across the plant and it seemed to be running good. I turned and Tatum, Billy Ray Tatum and Bill Goza came in the office. I had my back to them where the door come in and they said John, we don't have anything against you and I said now wait a minute. I had heard as I was leaving the next morning after my crew had gone, Owen Flemings had told me they were planning on shutting the plant down on me at twelve o'clock that night, the next night. So I said wait a minute, I said you don't want to do this and they said yeah, we haven't got anything against you but we just feel like we need to do it. So I turned around and started facing them, they were at the back part of the office. And I was trying to talk them out of it. I said I didn't think they were doing the right thing. I knew they had problems and all but that's not the way to handle it. Then Tatum said well it's too late now and I turned around and there was a couple or three people on each machine where you put the material into it and they were purging the machines out.

* * * * *

[18] The overall facts reveal that Holly was sympathetic to the employees in their desire to present grievances and to obtain better working conditions and benefits. His testimony, however, on this point is uncontradicted and believable.

[19] Eight extruders were turned off. Several chillers were not turned off.

[20] There appears to be little dispute between the testimony of Biddle and Holly as to what occurred.

There was a couple or three people at each machine, they were putting purge into the machine. At that time Goza and Tatum left out of the office and they went over here to the other side and started purging the machines over there, purging those out, or helping. I walked back—Goza went to one side, Tatum went to the other. I went over there to the number five machine, Goza was on it—no, Tatum was on it. Number four machine, Albert was on it.

Q. Who is Albert?

A. Mike Bethany. I walked back there where they were and I noticed on the number two machine Roxanne Sellers and Wanda, I believe, were on the number two machine. I knew that neither of those were operators so I walked over there where they were and I had already got kind of nervous myself then, I was trying to see that Wanda and them got it purged out right since they were going to purge it. I walked back over to where Mike Bethany was and I told Mike, I said Mike, this machine's got some hangups in it, I said if you're going to purge it out, go ahead and tear it down to where we'll get—and he did. Then I told the same thing to Tatum, which he did. Then I walked over on the other side and looked and seen those were purged out. I come back by Mike and went on in to the office and called Scott Dickson.

Excerpts From Biddle's Testimony

Q. Okay. He asked you if you would disassemble them?

A. Right.

Q. What did y'all say?

A. We told him we'd be happy to. We wanted to do everything the right way so we went on to start disassembling them and everything and he stayed around back where we was at talking to everybody and he went up front and he came back and he asked Wanda Phillips for a cigarette, she was helping on the machine I was taking apart at the time. He said y'all are going to have to hurry up, he said I'll give you a little bit more time, but he said you're going to have to hurry up, I've got to go call Fred and Scott. So we went ahead with what we was doing. We had all the machines disassembled except one when Scott come in.

The above referred to telephone call from Holly to Plant Engineer Dickson occurred around 12:20 a.m. Dickson then made a telephone call to Plant Manager Bradley. Following this, Dickson left for the plant and arrived there approximately around 12:40 a.m. Around this time or shortly thereafter, Plant Manager Bradley arrived at the plant.

Around the time of Bradley's arrival, Dickson had indicated to Holly that he could not talk to the group, to get some spokesmen. Holly had asked Dickson if one per shift would be enough. Dickson had indicated that this would be fine. About this time, Bradley arrived at the plant, spoke to Holly, and indicated that there should be a meeting in the conference room. Holly then told the employees that they needed a spokesman from each shift, that Scott (Dickson) said he could not talk to "this group," that Bradley said he would meet with one person off each shift, and that the employees should decide who they wanted to meet with Bradley and Dickson in the conference room. The employees selected Biddle, Kennedy, Tatum, and Bethany as spokesmen for the four shifts.

Plant Manager Bradley, Plant Engineer Dickson, Supervisor Holly, and employees Biddle, Kennedy, Tatum, and Bethany met in the plant's conference room. Dickson asked the employees to tell him what their problems were. Biddle commenced reading from a list of grievances which the employees had prepared in the nature of a petition and to which employees had affixed their signatures. The facts are clear that Biddle in effect covered the grievances as set forth on the list in his presentation. Biddle and the employees expanded on the grievances. As an example, one of the grievances set forth was "Disciplinary policy has done been broken. We would like to know why." As to this grievance, the employees discussed the firing of Jester as is revealed by the following credited excerpts from Biddle's testimony.

Q. What was the discussion?

A. We asked them why they had fired Billy Jester, we felt they had unjustly fired him. As far as we knew they hadn't given any reason for letting him go and Scott Dickson asked us if we'd like to have him hired back and we said yes, we would. He thought for a minute and said well, there is no way we can hire him back, that's all there is to it.

At one point in the meeting, Dickson asked the employees if they were thinking about unionizing. The employees told Dickson that they knew the union man's telephone number.

Dickson remarked at the end of the meeting that if this were all to be discussed that he guessed the employees could go home. Bradley then apparently indicated that the meeting was over, that employees should go home except for two employees who should stay for cleanup. Dickson asked the employees to go around and check to make sure that everything had been turned off properly. Biddle and perhaps others went and turned off two chillers which had not been turned off. Dickson also checked the equipment and found a chiller, located outside the building, which had not been turned off.[21] The other employees left the premises.

Although there was discussion about the referred-to grievances, Dickson's and Bradley's ultimate response appears to be that they would try to satisfy their complaints and work with them. Both Dickson and Holly indicated to the employees that they were using the wrong

[21] Respondent's argument as to employee responsibility or misconduct appears to go in two directions. First, Respondent argues that employees engaged in misconduct by turning off several machines. Secondly, Respondent appears to argue that there was misconduct in not turning off the outside chiller. The evidence reveals that overall responsibility for turning off equipment rests with the shift supervisor. It is clear that the evidence does not reveal that employees engaged in sabotage of equipment or intentionally failed to turn off the "outside chiller." Whether this equipment was defective or became defective as a result of not being turned off is not clear

way to present their grievances. Dickson and Holly inquired as to whether the employees would go back to work if they could get someone from Mineral Wells to talk to them within a week. Several of the operators appeared interested in such a proposal. After discussion among the operators, the operators decided not to start the machines back up.[22]

The next morning Bethany, Tatum, Kennedy, and Biddle went to the plant around 9 a.m. and spoke to Plant Manager Bradley. What occurred is revealed by the following excerpts from Biddle's credited testimony.

> We asked him if he'd heard anything from Mineral Wells and he said well, the only thing I can tell you is they told me not to talk to you people because they was afraid I'd muddy the water some more.
>
> Q. Then what happened?
>
> A. We turned and left and went home.

The overall facts reveal that Respondent's management had discussions and decided to fire those whom it had reason to believe had participated in actually physically and personally turning off equipment. The overall facts reveal a reasonable basis for Respondent's belief that Bethany, Biddle, Goza, Kennedy, and Tatum had physically and personally turned off running equipment. Further, the facts support a finding, and I so find, that Respondent believed that Bethany, Biddle, Goza, Kennedy, and Tatum had physically and personally turned off running equipment, and that Respondent decided to fire such employees for such reason.[23]

Later that day, certain of Respondent's supervisors telephoned Biddle and Kennedy, and apparently Bethany, Goza, and Tatum, and told them that they were fired. Supervisors told Biddle and Kennedy, and apparently Bethany, Goza, and Tatum, that the supervisors had not been told why the employees had been fired.

Around September 11, 1979, Biddle and Kennedy went to the plant to pick up their checks. At such time Biddle and Kennedy inquired of Plant Engineer Dickson as to why they had been discharged. Dickson told them that he would talk to them one at a time. Dickson then took them separately into his office and showed them separately the following notice.

NOTICE TO ALL EMPLOYEES

> Following the unauthorized plant shut down at the beginning of the mid-nite to 8:00 a.m. shift on 9/10/79 the Company has taken the following action. M. Bethany, N. Biddle, B. Goza, J. Kennedy and B. R. Tatum have been discharged for inciting and participating in the unauthorized plant shut down. These persons are the only known persons present at the time of the unauthorized plant shut down with the necessary skills to shut the machines down.
>
> Shift Supervisors have called all remaining members of their crews notifying them to return to work beginning at 8:00 a.m. 9/11/79. Those not returning as notified will be considered to have voluntarily quit.
>
> Any subsequent interruptions of any work schedules will result in the discharge of all participants in these actions.

On or about September 12, 1979, other employees returned to report to work. At such time Dickson questioned the employees and solicited them to complete a questionnaire as set out below.

September 11, 1979

> I, , do hereby testify that the following person(s) ask [sic] for my support in the unauthorized plant shut down on 9/10/79. There was (was not) coercion involved in this request made by the above mentioned person(s).
>
> I did (did not) participate in the actual shut down of any Can-Tex equipment.
>
> The above information is correct in its entirety.
>
> Signed:

What occurred in Dickson's interviews with employees is revealed by the following credited excerpts from Dickson's testimony.[24]

> I invited them into my office individually one at the time. I explained to them why I had them in there, I told—I had the piece of paper that you just had me identify. They did not have to sign that piece of paper or put any information on it whatsoever and the only thing I was trying to determine was whether or not they had actually participated in a hands-on type situation whereby they were involved in shutting company equipment down without authorization. I told them I would take their word for it. If they said they were not involved, then they were not involved. If they said they were involved, I would have to discharge them.
>
> * * * * *
>
> It was pretty much consistent for each one of them. Of course each employee is going to bring out different things so I'm sure there were some variations in what was said, but basically my side of it was that when they first came in I explained to them why they were there because I didn't want them to have any misgivings about what might possibly happen to them. And I told them that if they admitted to actually participating in that plant shutdown, then I was going to have to terminate their

[22] It is clear that the employees in early July 1979 had sought to have someone from Mineral Wells, Texas, come and talk to them and had been promised by Oger that someone would come, and that no one had then come from Mineral Wells. It is also clear that written grievances had not been previously given to the Employer. Further, the facts indicate that Respondent had a local employer-employee committee relationship wherein grievances could be tendered.

[23] No evidence was presented to reveal that such employees did not physically or personally turn off running equipment.

[24] Jones testified credibly that he was asked whether he had participated in the shutdown and that he was asked to sign the questionnaire which he did.

employment. On the other hand, if they said they weren't involved in it, I was going to take their word for that too. I had the document which the young lady had earlier that we went over and what I was trying to do there and what I told them was this is as much for your protection as anything else because if you tell me that you didn't participate in it and then you put your name on this, this document can't do anything except support you. On the other hand, you don't have to write anything on it at all, you don't have to put your name or anything and if you tell me you weren't involved in it, you still don't have to sign it if you don't want to. Some employees signed it. By far the vast majority of the ones who said they did not participate in it did sign it. Most of the ones that said they did participate did not sign it. There were some blanks on the document and what I was trying to do there was I was really trying to find out if any of these people that didn't actually participate in it, or for that matter some of the ones that might have actually participated, had actually been coerced into doing it because had they actually been forced with a threat of bodily injury or something, hey, you're going to do it or else we're going to go out and beat your kids up and rape your wife, you know, that might change the picture a little bit.

Q. Do you recall if any employees filled in the blank stating—

A. There were I believe at least two employees that did voluntarily put someone's name in the blank. Now there were no circling—there was no one that actually circle the comment about yes I was coerced. No one said they were coerced or anything like that. There was a blank in there concerning if they wanted to give the name of the person that asked them to participate, they could put their name and there were two individuals I believe that did that.

The litigation of this case reveals the usage of much imprecise and loose language by the parties. Thus, references were made to shutdown without setting forth whether shutdown meant reference to simply striking or to turning off equipment. Similarly, references were made to unauthorized shutdown without setting forth whether such had bearing on an unauthorized ceasing to work or an unauthorized turning off of equipment. Further, references were made to "participation" in an unauthorized shutdown without setting forth in every instance whether participation meant merely striking activity or participation in the actual physical turning off of equipment. Considering the language in the September 11, 1979, questionnaire and Dickson's credited testimony, the overall facts reveal that Dickson's questioning and the questionnaire were designed to ascertain those who admitted to physically and personally shutting down equipment. Thus, I conclude and find that Respondent, at the time it discharged Darvin Jones, Wanda Phillips, David Wakeland, Ricky Mason, Cynthia Sellers, Randy Whatley, Jeff Spence, and Mildred Morgan had a reasonable basis of belief that such employees had been involved physically and personally in the actual shutting down of running equipment on September 10, 1979. I further conclude and find that Respondent discharged the above-referred-to employees on September 12, 13, and 14, 1979, because it believed such employees had personally and physically turned off running equipment on September 10, 1979. No evidence was presented to reveal that such employees had not engaged in such conduct.

Contentions and Conclusions

1. The General Counsel contends and alleges and Respondent denies that "on or about September 10, 1979, certain employees of Respondent, employed at Respondent's facility, ceased work concertedly and engaged in a strike," and that the said strike was caused by the unfair labor practices alleged to have occurred before September 10, 1979.

Considering the facts in totality, the facts clearly establish that the employees on September 10, 1979, ceased work concertedly and engaged in a strike. The major issue presented in this case is whether the employees' turning off running machinery constituted unprotected activity. As set forth later, it is found that such conduct constituted protected concerted activity and not unprotected activity.

Further, the facts reveal that part of the employees' reasons for striking on September 10, 1979, was to protest the unfair labor practice discharge of Jester. Excepting as to the unfair labor practice discharge of Jester, I find no evidence that other unfair labor practices constituted a part of the employees' reasons for striking on September 10, 1979.

2. The General Counsel contends and alleges and Respondent admits that Respondent (a) on September 11, 1979, discharged Norman Biddle, Bill Goza, Billy Ray Tatum, James Kennedy, and George Michael Bethany, (b) on September 12, 1979, discharged Darvin Jones, Wanda Phillips, David Wakeland, and Ricky Mason, (c) on September 13, 1979, discharged Cynthia Sellers, Randy Whatley, and Jeff Spence, and (d) on September 14, 1979, discharged Mildred Morgan.

The General Counsel alleges and Respondent denies that Respondent discharged the above-referred-to employees because they had engaged in ceasing work concertedly and in striking, in order to discourage employees from engaging in such activities or other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

It is clear that the cessation of work for the purpose of presenting grievances for meaningful disposition constitutes protected concerted activity. The only real issue is whether the employees' turning off Respondent's running equipment rendered such employee conduct to be unprotected conduct for which Respondent could discharge such employees without violating the National Labor Relations Act. It appears that the General Counsel has litigated the question of whether the strike was caused by unfair labor practices as added justification for the employees' turning off the machinery. In my opinion, if the turning off of the running equipment constituted un-

protected conduct, the totality of the preexisting unfair labor practices by Respondent would not be sufficient to justify unprotected conduct.

The real issue is whether the employees' action in turning off machinery rendered their concerted action in striking to be unprotected. The parties have argued many cases which have been considered.

Respondent argues that the employees' turning off the running equipment constituted a "taking over" of Respondent's plant. It appears in effect that Respondent includes in such argument a contention that the employees usurped management's option of continuing to operate such equipment whether or not the employees ceased working.

The overall facts and testimony clearly reveal the danger of foreseeable imminent damage to Respondent's equipment had the employees simply walked off and left the equipment running. Dickson's testimony at one point seemingly indicated that the equipment was automatic and would continue to run without employees. However, his testimony revealed that when the pipe racks were full that there would be a hangup and possible breakage of a saw. Further, Dickson testified that good pipe would continue to be made even if the saw were broken. Such testimony seems to suggest that pipe would continue to be extruded without setting forth where the pipe would go. It appears reasonable to believe that when the pipe rack became loaded that the end of the pipe would become jammed and it would appear that damage would result to the equipment. Further, the testimony as to the processing of pipe indicates a need to monitor controls, that if such were not done that heat damage and related damage could occur to the equipment.

Considering the above, it is reasonable to believe that employees' failure to turn the equipment off could have rendered their concerted activity to be unprotected. The employees' turning off of the equipment does not reveal a flagrant disregard for Respondent's property or rights but rather a proper concern as to the protection of such rights.[25] Further, the facts reveal that Respondent's supervision had an ample awareness of the upcoming shutdown and did nothing to indicate that Respondent wanted the machines to keep running if the employees concertedly struck. Supervisor Holly was present and did not tell employees that they should leave the machines running when they ceased working. Rather, Holly indicated that he was cooperating by not calling his higher-ups at that time. Under such circumstances, the employees' conduct in ceasing work and turning off of the running machinery clearly constituted protected concerted activity.

Considering the foregoing, I am persuaded that the fundamental principles set forth in *Marshall Car Wheel and Foundry Co. of Marshall, Texas*, 107 NLRB 314 (1953),[26] require a finding that the employees' actions in shutting off machinery did not change their concerted activity from a protected status to that of an unprotected status. Thus, in *Marshall* the Board said:

> In cases involving supervisory and plant protection employees, the Board has recognized the validity of the general principle that the right of certain classes of employees to engage in concerted activity is limited by the duty to take reasonable precautions to protect the employer's physical plant from such imminent damage as forseeably would result from their sudden cessation of work. We are of the opinion that this duty extends as well to ordinary rank-and-file employees whose work tasks are such as to involve responsibility for the property which might be damaged. Employees who strike in breach of such obligation engage in unprotected activity for which they may be discharged or subjected to other forms of discipline affecting their employment conditions.

Accordingly, the sum of the facts reveals that the employees referred to above as being discharged on September 11, 12, 13, and 14, 1979, engaged in protected concerted activity of ceasing work and striking on September 10, 1979, and were discharged because of having engaged in such protected concerted activities. By the discharge of such employees, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.[27]

3. The General Counsel contends and alleges and Respondent denies that Respondent "on or about September 10, 1979, interrogated its employees about their union activities, membership and sympathies."

The facts are clear that Dickson asked Biddle and the other employee spokesmen on the morning of September 10, 1979, whether they were thinking about unionizing. In the context of the meeting to discuss grievances and the reasons for the shutdown and in the absence of evidence to reveal a legitimate basis for such inquiry or assurances of nonreprisals, such questioning must be found to be coercive and violative of Section 8(a)(1) of the Act.

4. The General Counsel alleges and contends and Respondent denies that the "Notice to Employees" dated September 11, 1979, and referring to the discharges of Bethany, Biddle, Goza, Kennedy, and Tatum, constituted a threat of discharge of employees violative of Section 8(a)(1) of the Act.

The facts reveal that the referred-to discharged employees and other employees had engaged in protected concerted activity on September 10, 1979, when the employees ceased work and turned off machinery. The notice was posted by the Employer and constituted a message to employees that such named employees had been discharged because of the employees having en-

[25] Biddle credibly testified to the effect that the employees turned the machinery off so as to avoid damage to the equipment.

[26] See also *N.L.R.B.* v. *Marshall Car Wheel and Foundry Co. of Marshall, Texas, Inc.*, 218 F.2d 409 (5th Cir. 1956), and *Marshall Car Wheel and Foundry Co. of Marshall, Texas*, 115 NLRB 7 (1956). See also *Hennepin Broadcasting Associates, Inc.*, 225 NLRB 486, 496, 497 (1976).

[27] The case of *Mal Landfill Corporation*, 210 NLRB 167 (1974), is distinguishable from the facts in *Marshall* and in the instant case. In *Mal Landfill*, the employees who were discharged had closed the gates to the landfill. Such employees were not taking steps to prevent damage to equipment, rather such employees were simply causing the employer, and other employees to not engage in the employer's work and to prevent customers from entering the premises. Such facts are distinguishable from acts undertaken to minimize possibility of damage to equipment.

gaged in protected concerted activity, that employees who did not cease from their concerted activity of cessation of work would be considered to have voluntarily quit, and that any subsequent recurrence of such protected concerted activity would result in discharge. It is clear that such notice constituted a threat that employees would be discharged for engaging in protected concerted activity as had occurred on September 10, 1979. Such threat clearly constitutes conduct violative of Section 8(a)(1) of the Act. It is so concluded and found.

5. The General Counsel alleges and contends and Respondent in effect admits that Respondent, by Dickson, beginning on or about September 12, 1979, interrogated its employees about their participation and the participation of their fellow employees in the concerted cessation of work on September 10, 1979. The General Counsel contends that such interrogation was unlawful in that it inquired about the employees' participation in protected concerted activities. Respondent contends that the employee cessation of work on September 10, 1979, was unprotected.

It has already been found that the employees engaged in protected concerted activity on September 10, 1979, when the employees concertedly ceased work. This being so, it is clear that Respondent, insofar as a contention of legitimate interest, acted at its peril in its interrogation of employees about their protected concerted activity. Further, Respondent's statement that it would take employees at their word as to whether they had physically turned off equipment does not eliminate the possibility of other reprisals even if Respondent had been free to discharge employees for physically turning machines off. It is clear that employee actions in turning the machines off did not render their protected concerted activity as unprotected. Thus, Respondent by its statements failed to assure employees that there would not be reprisals concerning their answers about their and others' engagement in protected concerted activities. Accordingly, it is found that the Respondent's questioning of employees about their and others' engagement in the concerted cessation of work on September 10, 1979, constituted conduct violative of Section 8(a)(1) of the Act.

J. *Events—Early October 1979 and Promise of Benefits*

The General Counsel's complaint alleged and Respondent's answer denied that Respondent, by Dickson, in early October, promised its employees better benefits by telling its employees that there would be a raise in February 1980, depending on how the union election came out.

The General Counsel presented Scott Dickson, a former supervisor and employee of Respondent and the agent alleged to have made the referred-to promise of benefits, as the initial witness in this case.

Dickson testified to the effect that he had numerous conversations with employees about raises, that if a statement were made about a raise in February that such was based on the past history of the plant, and that reference would have been to a typical raise of a cost-of-living type in accordance with governmental guidelines. Dickson's testimony was also to the effect that it was his understanding that he and others were told that Can-Tex would look at and evaluate the raise situation in January or February.

The General Counsel's principal witness on this issue was Burdine. Burdine credibly testified to the effect that in the middle of October 1979 Dickson had a conversation with him. As to the specifics, Burdine testified as is revealed by the following excerpt from his testimony.

> Q. Can you tell us please what was said during that conversation.
>
> A. That in a year or two I might be looking at a salaried job, first of the year was looking at a seven or eight percent raise, depending on how the union come out.

The General Counsel then followed up with questions as to whether the foregoing was exactly what Dickson had said. Burdine's further testimony was to the effect that such was close to what was said. Burdine again testified in conclusionary fashion as to what was said. The General Counsel with a leading question then elicited that Burdine had testified to Dickson's exact words.

Respondent's cross-examination of Burdine completely destroyed the implication that a promise of benefit had been made. Such examination is as revealed by the following excerpts from the record.

> Q. Mr. Burdine, this conversation that you had with Scott Dickson, did he in any way tell you, as you testified, Mr. Dickson told you you were looking in a year or two to become a salaried man, did he say in any way that that was going to be conditioned upon a union coming into the plant or staying out?
>
> A. No.
>
> Q. Did he state that would be conditioned in any way upon how you voted in the union election?
>
> A. No.
>
> Q. The raise that he was talking about, he said seven percent, do you know where he got that figure, seven percent?
>
> A. Out of the air, you know, just an average.
>
> Q. He didn't say anything to the effect that Can-Tex is going to comply with the Presidential guidelines and that the raise will be in February and it'll be seven percent. Do you recall any of that?
>
> A. No.
>
> Q. You don't recall any discussion about the Presidential guidelines?
>
> A. About the raise?
>
> Q. Yes.
>
> A. Yeah, we talked about it.
>
> Q. Okay. Did he in any way state that you may not get the raise in February if the union were to come into the plant?
>
> A. No he did not.
>
> Q. Did he in any way state that the raise would be delayed if the union came into the plant?
>
> A. No.

Following Respondent's cross-examination, the General Counsel's attempt at rehabilitation of Burdine was limited to a leading question to which Burdine simply answered yes.

Conclusion

The testimony of Dickson has little value except to indicate that a conversation about raises could have occurred, that reference to a raise in February could have been made, and that there was a possibility that references had been made to governmental guidelines.

Burdine's testimony on direct examination appeared to be conclusionary. Respondent's cross-examination of Burdine completely destroyed the value of the direct examination as establishment that a "promise of benefit" had been made. The General Counsel's attempt at rehabilitation of Burdine by leading questions elicited an answer of such weak weight that it must be said that Burdine's answers on cross-examination must be credited. In sum, the facts fail to reveal credited evidence to establish the "promise of benefit" as alleged.

K. *The Fact Sheet—November 13, 1979*

The facts clearly establish that Respondent posted at its plant on or about November 13, 1979, a "Fact Sheet & Answers" as is revealed by the following:

November 13, 1979

CAN*TEX

FACTSHEET & ANSWERS

QUESTION: Will we have strikes if the union gets in?

ANSWER: We cannot say for sure, but we do know that there has never been a strike at any of our plants where there is no union. This means that with a union there is a strong possibility of a strike.

WHAT YOU SHOULD KNOW ABOUT STRIKES:

—Striking workers receive no paychecks.

—By state law, strikers receive no unemployment money.

—Strikers can lose their jobs to new hire replacements.

—Strike benefits paid by the union are very small & in no way make up for lost pay.

—Strikes can often result in violence, threats and personal harm, leaving bitterness and personal scars.

* * * * *

4 OUT OF 5
AMERICAN WORKERS
DO NOT BELONG TO ANY UNION
THEY HAVE NOT BEEN FOOLED
BY EMPTY UNION PROMISES
VOTE NO
[X]

Contentions and Conclusions

The General Counsel contends and Respondent denies that Respondent, by posting the above-referred-to "Factsheet & Answers," threatened its employees with loss of jobs if the Union were selected as the employees' collective-bargaining representative.

Considering the "Factsheet & Answers," I find no evidence to reveal that Respondent communicated that strikes were inevitable or that in such regard that employees were threatened with loss of jobs if the Union were selected as the employees' collective-bargaining representative. Accordingly, the facts fail to establish that Respondent has violated Section 8(a)(1) of the Act by such alleged threat of loss of jobs. It is therefore recommended that the complaint allegation of unlawful conduct by such alleged threat be dismissed.

L. *Events—Circa November 15, 1979—Supervisor Teddy Lee*

The facts are clear that on or around November 15, 1979, the day before a scheduled NLRB representation election, Supervisor Teddy Lee spoke to several employees about the Union. Two of such employees were Mark Shapley and Charles Jackson.

I credit the testimony of Shapley to the effect that Lee interrogated him as to what he thought about the Union. I similarly credit the testimony of Jackson to the effect that Lee interrogated him as to what he thought about the Union.[28]

Jackson credibly testified to the effect that Lee told him that breaks would be shorter if the Union came in.[29]

Jackson further testified that Lee spoke to him about a raise as is revealed by the following excerpts from his testimony.

Q. Was there any discussion about wages?

A. Yes, about—I think he mentioned we were going to get a raise in February.

Q. What exactly do you remember him saying about the raise?

A. Well he told me, he assured me we were going to get a raise in February.

Q. Now you say he assured you, how did he assure you, what did he say?

A. He said we're going to get a raise. I might have asked about it. I'm pretty sure I did.

[28] Lee in his testimony does not really deny that he asked the employees as to what the employees thought about the Union.

[29] Lee testified to the effect that he told the employees that it was possible that breaks would be shorter if the Union came in. Jackson's testimony was specific as compared to Lee's recital of what he told employees in general. I find Jackson's testimony more reliable and credit it over Lee's where in conflict.

Lee testified concerning the question of raises as is revealed by the following excerpts from his testimony.

> Q. Did you tell Charles Jackson or another employee that they would get a raise in February?
>
> A. No, I did not. I told them that in the past in the seven years that I've worked there, that every year either in January or February we have received one.

Considering the unsureness of Jackson's testimony as to the discussion of raises, I find Lee's testimony as to the discussion of raises more reliable. I credit Lee's version of facts relating to the discussion of raises over that of Jackson's.

Considering all of the foregoing, I conclude and find that Respondent, by Lee, on or about November 15, 1979, interrogated employees about their union beliefs. The facts do not reveal a legitimate need for such interrogation. Nor do the facts reveal that assurances of nonreprisal were given such employees in connection with such interrogation. Accordingly, such interrogation was coercive and violative of Section 8(a)(1) of the Act. It is so concluded and found.

Further, the credited facts reveal that Lee told employee Jackson that the breaks would be shorter if the Union came in. Such conduct clearly constituted a threat of less desirable working conditions to be imposed if the employees selected a union. Such conduct is clearly violative of Section 8(a)(1) of the Act. It is so concluded and found.

As to the discussion of raises, the statements merely reflected practice and did not constitute a promise of better benefits to be derived from rejection of the Union. Accordingly, the allegation of conduct violative of the Act in such regard will be recommended to be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it will be recommended that Respondent cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It having been found that Respondent discharged Billy Jester, Norman Biddle, Bill Goza, Billy Ray Tatum, James Kennedy, George Michael Bethany, Darvin Jones, Wanda Phillips, David Wakeland, Ricky Mason, Cynthia Sellers, Randy Whatley, Jeff Spence, and Mildred Morgan in violation of Section 8(a)(1) of the Act, the recommended Order will provide that Respondent offer each reinstatement to each's job, and make each whole for loss of earnings or other benefits within the meaning and in accord with the Board's decisions in *F. W. Woolworth Company*, 90 NLRB 289 (1950); *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), except as specifically modified by the wording of such recommended Order.

Because of the character of the unfair labor practices herein found, the recommended Order will provide that Respondent cease and desist from in any other manner interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Can-Tex Industries, Division of Harsco Corporation, the Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. UBC, Southern Council of Industrial Workers, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By discharging Billy Jester, Norman Biddle, Bill Goza, Billy Ray Tatum, James Kennedy, George Michael Bethany, Darvin Jones, Wanda Phillips, David Wakeland, Ricky Mason, Cynthia Sellers, Randy Whatley, Jeff Spence, and Mildred Morgan, Respondent has interfered with, restrained, and coerced employees because of their engagement in protected concerted activities and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

4. By the foregoing and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, Respondent engaged in unfair labor practices proscribed by Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[30]

The Respondent, Can-Tex Industries, Division of Harsco Corporation, Magnolia, Arknsas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, or otherwise discriminating against employees in regard to hire or tenure of employment, or any term or condition of employment because of their engagement in protected concerted activities.

(b) Threatening employees with discharge, less desirable working conditions and other reprisals because of their engagement in union or protected concerted activities.

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[30] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Promising better or increased benefits, terms, or conditions of employment in order to dissuade employees from selecting a union or engaging in other protected concerted activity.

(d) Coercively interrogating employees about their or others' union activities, desires, or beliefs, or about their engagement in protected concerted activities.

(e) Maintaining any rule which prohibits employees from engaging in union solicitation during their nonworking time or which prohibits employees from distributing union literature during their nonworking time in nonworking areas of the plant premises.

(f) Soliciting grievances in such a manner as to constitute an implied promise of benefits in order to dissuade employees from selecting a union or engaging in other protected concerted activities.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accord with Section 8(a)(3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Offer to Billy Jester, Norman Biddle, Bill Goza, Billy Ray Tatum, James Kennedy, George Michael Bethany, Darvin Jones, Wanda Phillips, David Wakeland, Ricky Mason, Cynthia Sellers, Randy Whatley, Jeff Spence, and Mildred Morgan immediate and full reinstatement to each's former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to each's seniority, or other rights previously enjoyed, and make each whole for any loss of pay or other benefits suffered by reason of the discrimination against each in the manner described above in the section entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at Respondent's plant at Magnolia, Arkansas, copies of the attached notice marked "Appendix."[31] Copies of said notice, on forms provided by the Regional Director for Region 26, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 26, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[31] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the allegations of unlawful conduct not specifically found to be violative herein be dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against employees in regard to hire or tenure of employment, or any term or condition of employment because of their engagement in protected concerted activities.

WE WILL NOT threaten employees with discharge, less desirable working conditions, or other reprisals because of their engagement in union activities or protected concerted activities.

WE WILL NOT promise better or increased benefits, terms, and conditions of employment in order to dissuade employees from selecting a union or engaging in protected concerted activities.

We will not coercively interrogate our employees about their or others' union activities, desires, or beliefs or about their engagement in protected concerted activities.

WE WILL NOT maintain any rule which prohibits our employees from engaging in union solicitation during their nonworking time or which prohibits our employees from distributing union literature during their nonworking time in nonworking areas of our plant premises.

WE WILL NOT solicit grievances in such a manner as to constitute an implied promise of benefits in order to dissuade employees from selecting a union or engaging in other protected concerted activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act except to the extent that such rights may be affected by lawful agreements in accordance with Section 8(a)(3) of the Act.

WE WILL offer to Billy Jester, Norman Biddle, Bill Goza, Billy Ray Tatum, James Kennedy, George Michael Bethany, Darvin Jones, Wanda Phillips, David Wakeland, Ricky Mason, Cynthia Sellers, Randy Whatley, Jeff Spence, and Mildred Morgan immediate and full reinstatement to each's former position or, if such position no longer exists, to a substantially equivalent position, without prejudice to each's seniority or other rights previously enjoyed, and make each whole for any loss of pay or other benefits suffered by reason of the discrimination against each.

CAN-TEX INDUSTRIES, DIVISION OF HARSCO CORPORATION